IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

WP(C).No. 35975 of 2005(G)

PETITIONER:

M/S.TRICHUR TOWERS HOTELS PVT.LTD.,
T.B.ROAD, THRISSUR DISTRICT, REPRESENTED BY
ITS MANAGING DIRECTOR, P.S.SUNIL KUMAR.

BY ADV. SRI.ARIKKAT VIJAYAN MENON
SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENTS:

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1. THE INTELLIGENE OFFICER, SQUAD NO.I,
DEPARTMENT OF COMMERCIAL TAXES, THRISSUR 4.

2. THE DEPUTY COMMISSIONER OF COMMERCIAL
TAXES, THRISSUR 4.

3. THE COMMISSIONER OF COMMERCIAL TAXES,
OPPO.MUSEUM, THIRUVANANTHAPURAM.

4. THE SPECIAL DEPUTY TAHSILDAR,
(AIT & S.T.COLLECTIONS), THRISSUR.

BY G.P. SRI.C.K.GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: COPY OF THE SHOP INSPECTION REPORT ISSUED BY R1 DT.23.12.2002.

P2: COPY OF THE CERTIFICATE ISSUED BY THE EXCISE INSPECTOR DT.23.12.2002.

P3: .DO. FOR VERIFYING THE ENTRIES DT.23.12.2000.

P4: COPY OF THE NOTICE ISSUED BY R1 DT.27.10.2003.

P5: COPY OF REPLY SUBMITTED BY PETITIONER BEFORE R1 DT.13.10.2003.

P6: COPY OF ORDER ISSUED BY R1 DT.25.6.2004.

P7: COPY OF ORDER ISSUED BY R2 IN STRP. NO.140/04 DT.1.12.2004.

P8: COPY OF ORDER PASSED BY R3 DT.17.11.2005.

TRUE COPY

P.A. TO JUDGE

C.R.

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.35975 of 2005

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Dated this the 9th day of July, 2007.

JUDGMENT

The petitioner is challenging Ext.P8 order whereunder the Commissioner of Commercial Taxes in second revision confirmed the first revisional order of the Deputy Commissioner reducing penalty levied under Section 45A of the KGST Act from Rs.45,43,622/- to Rs.30 lakhs.

2. I heard counsel for the petitioner and Government Pleader. I have also gone through the files produced in court and the impugned orders. The petitioner is a bar hotel engaged in retail sale of liquor which is normally sourced from Kerala State Beverages Corporation. According to counsel for the petitioner, petitioner is maintaining all the books of accounts and entire purchases are from Beverages Corporation which is a Government of Kerala undertaking. However, when inspection was carried out in the business premises on 23.12.2002, substantial stock variation was noticed as is evident from Ext.P1 Shop Inspection Report prepared by the Department. At the time of inspection only photocopies of pages 66 to 69 of the stock register was taken by the Inspecting Team and the original stock register was entrusted with the petitioner. However, when petitioner was called

upon to produce books of accounts, the Intelligence Officer noticed that petitioner had carried out corrections and manipulations in the stock register and even the signature and the rubber stamp of the Inspecting Officer at page 69 was rubbed off. Therefore, the stock register produced which is the basic document was found to be unacceptable by the Intelligence Officer. However, based on entries in the photocopies taken at the time of inspection, he has analysed the physical stock noticed on inspection with reference to documents and found substantial variation based on which penalty of Rs.45,43,622/- was levied. In first revision, the Deputy Commissioner even though confirmed the findings of the Intelligence Officer in regard to unaccounted purchase and sales, reduced the penalty to Rs.30 lakhs. The second revision filed against the first revisional order was unsuccessful and therefore, petitioner has filed this W.P. against the same.

3. The main contention raised by the petitioner is that liquor is sourced from Kerala State Beverages Corporation, a Government of Kerala undertaking and the entire purchases are accounted. Even though it was improper to make corrections in the stock register, counsel for the petitioner contended that such corrections carried out pertain to patent mistakes and petitioner did not intend to manipulate records. Counsel further submitted that the stock of liquor found in the shop contained seal of the Beverages Corporation and therefore, such stock were purchased from

Beverages Corporation. In the absence of any stock without seal of the Beverages Corporation, it cannot be said that petitioner has purchased liquor from unaccounted source, is his argument. The petitioner has relied on decision of this court confirmed by the Supreme Court in STATE OF KERALA V. LOVELY THOMAS (2003) 131 STC 8. However, Government Pleader relied on decision of the Supreme Court in MARY ANTONY V. STATE OF KERALA 2000(2) KLT 795. I am unable to accept the proposition that all liquor found with seal apparently of the Beverages Corporation should be taken as liquor purchased from Beverages Corporation Limited. Since the legitimate source of liquor for a retailer can be only from Beverages Corporation, I see no reason why purchase bills issued by the said Government company and stock register cannot be maintained to prove genuineness of the physical stock held. In other words, there was no difficulty for the petitioner to maintain accounts and prove stock with copies of purchase bills. There is no presumption that liquor sold everywhere in the State is completely sourced from Beverages Corporation. So often cases of import and sale of illicit liquor from outside States are detected and reported in the media. In a country where currency notes are counterfeited, I don't know what is the difficulty in printing and affixing seal of a Government company. Therefore, in the absence of proper accounts to prove quantity of liquor sold and held, irregularity noticed cannot be justified by assuming that entire retail sale of liquor is sourced

only from Kerala State Beverages Corporation Ltd. Therefore, I am unable to accept the explanation offered by the petitioner to justify the massive correction and manipulation in the stock register and rubbing off of seal and signature of the officer which are done obviously to camouflage actual transactions. In the circumstances, there is no justification to interfere with concurrent finding of fact by three authorities with regard to unaccounted transaction in the purchase and sale of liquor. However, I feel reduction in penalty is called for, for more than one reason. In the first place, petitioner is entitled to benefit of doubt because the departmental officials have not looked into the possibility of spurious seals of the Government Corporation on liquor bottles. Moreover, one of the basis for estimating unaccounted sale is charging of higher margin over accounted sale price in second sale of liquor which can lead to only evasion of turnover tax and not sales tax which is payable at first sale point. Lastly, based on penalty orders, substantial demand of tax is also said to be made in the assessment, though under contest. In these circumstances and taking a lenient view, I reduce the penalty from rupees thirty lakhs to rupees fifteen lakhs.

C.N.RAMACHANDRAN NAIR
Judge

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